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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

CRISHANDA PATTON, an individual,
on behalf of herself and others similarly
situated

PLAINTIFF,

v.

CHURCH & DWIGHT CO., INC.;

DEFENDANTS.

CASE NO.

CLASS ACTION COMPLAINT FOR:

1. Violation of the Fair Credit Reporting Act for Failure to Make Proper Disclosures, 15 U.S.C. § 1681b, et seq.;
2. Violation of the Fair Credit Reporting Act for Failure to Obtain Proper Authorization, 15 U.S.C. § 1681b, et seq.;

DEMAND FOR A JURY TRIAL

1 Plaintiff CRISHANDA PATTON ("Plaintiff"), on behalf of herself and all
2 others similarly situated, alleges on information and belief, except for her own acts
3 and knowledge, the following:

4 **I.**

5 **INTRODUCTION**

6 1. Defendant CHURCH & DWIGHT CO., INC. ("Defendant") is a New
7 Jersey Corporation and at all relevant times mentioned herein conducted and
8 continues to conduct substantial and regular business throughout California.

9 2. Defendant is a leading consumer packaged goods companies in the
10 United States providing household and personal care products.

11 3. Plaintiff applied, was hired, and performed work for Defendant in
12 Victorville, California as a Forklift Operator.

13 4. During the application process, Plaintiff filled out Defendant's standard
14 form permitting Defendant to obtain a consumer report verifying Plaintiff's
15 background and experience.

16 5. Plaintiff now brings this Class Action on behalf of herself and a
17 nationwide class, defined as:

18 "All persons in the United States who filled out Defendant's
19 standard application form permitting Defendant to obtain a
20 consumer report verifying the applicant's background and
21 experience at any time during the period beginning five (5) years
22 prior to the filing of this Complaint and ending on the date as
determined by the Court." (the "Proposed Class")

23 **II.**

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction over Plaintiff's federal claims pursuant to 28
26 U.S.C. §1331 and 15 U.S.C. §1681 of the FCRA.

27 7. Venue is proper in this district pursuant to 28 U.S.C. §1391(d) because
28 Defendant is subject to personal jurisdiction in this district, maintains offices in this

1 district, and the actions at issue took place in this district.

2 **III.**

3 **THE PARTIES**

4 A. **PLAINTIFF**

5 8. Plaintiff applied, was hired and performed work for Defendant as a
6 Forklift Operator in Victorville, California from August 2017 to September 2017.

7 9. During the application process with Defendant, Plaintiff was required
8 to fill out Defendant's standard form permitting Defendant to obtain a consumer
9 report verifying Plaintiff's background and experience. The document signed by
10 Plaintiff also contained a liability release.

11 10. Following completion of the application, Defendant hired Plaintiff.

12 B. **DEFENDANT**

13 11. Defendant is a New Jersey Corporation. At all times relevant herein,
14 Defendant conducted and continues to conduct business throughout the State of
15 California including hiring and employees such as Plaintiff.

16 12. Defendant's entity address listed with the California Secretary of State
17 is 500 Charles Ewing Blvd, Ewing, NJ 08628.

18 13. Defendant requires Plaintiff and all other persons similarly situated to
19 fill out Defendant's standard form permitting Defendant to obtain a consumer report
20 verifying the applicant's background and experience.

21 14. With respect to the events at issue in this case, Defendant is liable for
22 the violations of law described in this Complaint.

23 15. Plaintiff is informed and believes and thereon alleges that each
24 Defendant acted in all respects pertinent to this action as the agent of the other
25 Defendant, and/or carried out a joint scheme, business plan or policy in all respects
26 pertinent hereto, and/or the acts of each Defendant are legally attributable to the
27 other Defendant.

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1 IV.

2 **NATURE OF THE ACTION**

3 16. The FCRA provides individuals with a number of rights. Specifically,
4 pertaining to employment-related background checks referred to as "consumer
5 reports", the FCRA provides that a prospective employee must give valid consent
6 to the background check. The FCRA requires a signed authorization and disclosure
7 from the applicant, sometimes referred to as a "consent" form.

8 17. The authorization and disclosure form must be executed and signed by
9 the applicant prior to an employer requesting or conducting a background check.
10 Importantly, no extraneous information can be attached or included on the consent
11 form. The authorization and disclosure must stand-alone.

12 18. In violation of 15 U.S.C. §1681b(b)(2)(A)(i), Defendant has unlawfully
13 inserted extraneous provisions into its standard forms purporting to grant Defendant
14 the authority to obtain and use consumer report information for employment
15 purposes for Plaintiff and all Proposed Class Members. The FCRA prohibits this
16 practice and requires that forms granting the authority to access and use consumer
17 report information for employment purposes be stand-alone forms, and not include
18 any additional information or agreements. Defendant's decision to include
19 extraneous information in its disclosure and authorization forms is contrary to the
20 plain language of the statute and unambiguous regulatory guidance from the Federal
21 Trade Commission ("FTC").

22 19. In violation of 15 U.S.C. § 1681b(b)(2)(A)(ii), Defendant has obtained
23 consumer reports regarding Plaintiff and all Proposed Class Members without proper
24 authorization because the authorization and disclosure forms failed to comply with
25 the requirements of the FCRA.

26 20. The inclusion of the liability waiver in Defendant's disclosure and
27 authorization forms invalidates the purported consent and also triggers statutory
28 damages under the FCRA in the amount of up to \$1,000 for each applicant for whom

1 Defendant obtained a consumer report without a facially valid, executed
2 authorization, as well as punitive damages, equitable relief, and attorneys' fees and
3 costs.

4 21. In addition, Defendant's failure to secure signed disclosure and
5 authorization forms invalidates the purported consent and also triggers statutory
6 damages under the FCRA in the amount of up to \$1,000 for each applicant for whom
7 Defendant obtained a consumer report without a facially valid, executed
8 authorization, as well as punitive damages, equitable relief, and attorneys' fees and
9 costs.

10 V.

11 **FACTUAL ALLEGATIONS**

12 22. Plaintiff applied to work for Defendant in Victorville, California. In
13 connection with her employment application with Defendant, Plaintiff was required
14 to fill out Defendant's standard form permitting Defendant to obtain a consumer
15 report verifying Plaintiff's background and experience. The form that Plaintiff
16 signed is labeled "Background Inquiry Release Authorization." After completion of
17 the application process, Defendant hired Plaintiff.

18 23. Defendant's standard form permitting Defendant to obtain a consumer
19 report verifying Plaintiff's background and experience was not limited just to the
20 authorization, but contained extraneous information specifically a liability release.
21 It states: "I hereby release the Company and its agents and all persons, agencies
22 (named and unnamed), and entities providing information or reports about me from
23 any and all liability arising out of the request for or release of any of the above
24 mentioned information or reports."

25 24. Thus, in addition, to the authorization and disclosure to obtain
26 information about background and experience, Defendants' form also contained a
27 liability release provision.
28

1 25. Upon information and belief, Defendant required all applicants to
2 complete the same standard form permitting Defendant to obtain a consumer report
3 verifying the applicant's background and experience that included release language.

4 26. The inclusion of this extraneous information in Defendant's standard
5 form permitting Defendant to obtain a consumer report verifying an applicant's
6 background and experience violates the FCRA, 15 U.S.C. § 1681, *et seq.*

7 27. Under the FCRA, it is unlawful to procure a consumer report or cause
8 a consumer report to be procured for employment purposes, unless:

9 (i) a clear and conspicuous disclosure has been made in writing to
10 the consumer at any time before the report is procured or causes
11 to be procured, in a document that consists solely of the
disclosure, that a consumer report may be obtained for
employment purposes; and

12 (ii) the consumer has authorized in writing (which authorization may
13 be made on the document referred to in clause (i)) the
procurement of the report.

14 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii)

15 28. Although the disclosure required by clause (i) and the authorization
16 required by clause (ii) may be combined in a single document, the FTC has warned
17 that the form should not include any extraneous information. Further, the FTC has
18 also specifically warned that the inclusion of such a waiver in a disclosure form will
19 violate Section 604(b)(2)(A) of the FCRA [15 U.S.C. §§ 1681b(b)(2)(A), which
20 requires that a disclosure consist solely of the disclosure that a consumer report may
21 be obtained for employment purposes.

22 29. This requirement is meant to prevent the consumer from being
23 distracted by other extraneous information side-by-side with this very important
24 disclosure. The disclosure shall not be diminished in importance by including
25 unrelated information. The disclosure must be clear and conspicuous,
26 understandable and noticeable.

27 30. By including extraneous information in its standard form permitting
28 Defendant to obtain a consumer report verifying the applicant's background and

1 experience, Defendant's conduct is contrary to the plain language of the statute.
2 Defendant willfully disregarded the FTC's regulatory guidance and violated 15
3 U.S.C. §§ 1681b(b)(2)(A).

4 31. Defendants' failure to provide a clear disclosure, in a document that
5 consists solely of the disclosure, deprived Plaintiff and others similarly situated of
6 the right to information and the right to privacy guaranteed by 15 U.S.C. section
7 1681b(n)(2)(A)(i)–(ii). Because Defendant unlawfully included extraneous
8 information in its standard form permitting Defendant to obtain a consumer report
9 verifying Plaintiff's background and experience, Plaintiff was confused by the
10 standard form document. Plaintiff was not aware that he was signing both an
11 authorization and a liability waiver combined into one document. He was confused
12 by the authorization-waiver document and did not understand, based on the
13 document, that Defendants would be requesting a "consumer report" as defined in
14 the FCRA and that the document purported to waive his right to sue.

15 VI.

16 THE CLASS

17 32. Plaintiff brings the First and Second Causes of Action on behalf of
18 herself and all others similarly situated as a Class Action pursuant to Rule 23(a) and
19 23(b)(3) of the F.R.C.P. Plaintiff satisfies the requirements of Rule 23(a) and (b)(3)
20 for the prosecution of this action as a class action. Plaintiff seeks to represent a Class
21 composed of and defined as follows:

22 "All persons in the United States who filled out Defendant's
23 standard application form permitting Defendant to obtain a
24 consumer report verifying the applicant's background and
25 experience at any time during the period beginning five (5) years
26 prior to the filing of this Complaint and ending on the date as
determined by the Court." (the "Proposed Class")

27 33. Plaintiffs reserve the right to amend or modify the Class description
28 with greater specificity or further division into subclasses or limitation to particular

1 issues.

2 34. Defendant, as a matter of corporate policy, practice, and procedure, in
3 violation of 15 U.S.C. §1681, et seq., intentionally, knowingly, and willfully,
4 engaged in a practice whereby Defendant uniformly, unfairly, and unlawfully
5 instituted a policy of obtaining consumer reports without valid authorization to do
6 so.

7 35. Defendant uniformly violated the rights of the Proposed FCRA Class
8 by violating the FCRA 15 U.S.C. §1681b(b)(2)(A)(i)-(ii) by unlawfully obtaining
9 consumer reports without first obtaining valid signed authorization and disclosure
10 forms.

11 36. This class action on behalf of members of the Proposed Class meets the
12 statutory prerequisites for the maintenance of a class action as set forth in Rule 23(a)
13 and 23(b)(3) of the F.R.C.P.

14 A. Numerosity

15 37. The Proposed Class is so numerous that joinder of all class members is
16 impracticable. While the precise number of members of the Proposed FCRA Class
17 has not been determined at this time, Plaintiff is informed and believes that
18 Defendant, during the relevant period, had applicants that numbered well over 1,000.

19 38. Plaintiff alleges that Defendant's records will provide information as to
20 the number of all members of the Proposed Class.

21 B. Commonality

22 39. There are questions of law and fact common to the Proposed Class that
23 predominate over any questions affecting only individual members of the Class.
24 These common questions of law and fact include, without limitation:

- 25 a. Whether Defendant required members of the Proposed Class to fill out
26 a standard application form permitting Defendant to obtain a consumer
27 report verifying the applicant's background and experience;
28 b. Whether Defendant's standard application form permitting Defendant

1 to obtain a consumer report verifying the applicant's background and
 2 experience complies with 15 U.S.C. §1681, et seq.;

3 c. Whether Defendant violated 15 U.S.C. §1681, et seq. by including
 4 extraneous information in its standard application form permitting
 5 Defendant to obtain a consumer report verifying the applicant's
 6 background and experience;

7 d. Whether Defendant violated 15 U.S.C. §1681, et seq. by failing to
 8 obtain signatures on its disclosure and authorization form;

9 e. Whether Defendant violated 15 U.S.C. §1681, et seq. by procuring
 10 consumer reports without valid authorization; and

11 f. Whether Defendant's violations of 15 U.S.C. §1681, et seq. were
 12 willful.

13 C. Typicality

14 40. The claims of the named Plaintiff are typical of the claims of the
 15 members of the Proposed Class.

16 41. Plaintiff is a member of the Proposed Class. Plaintiff was an applicant
 17 and filled out Defendant's standard form permitting Defendant to obtain a consumer
 18 report verifying an applicant's background and experience during her application
 19 process. Plaintiff was subjected to the same unlawful practices as other members of
 20 the Proposed Class.

21 42. Plaintiff and other members of the Proposed Class suffered the same
 22 injuries and seek the same relief.

23 D. Adequacy of Representation

24 43. Plaintiff will fairly and adequately represent and protect the interests of
 25 the members of the Proposed Class.

26 44. Counsel for Plaintiff are competent and experience in litigation of large
 27 complex consumer and wage and hour class actions.

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E. Predominance and Superiority of a Class Action

45. A class action is superior to other available means for fair and efficient adjudication of this controversy. Individual joinder of all members of the Proposed Class is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Proposed Class.

46. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

47. Class action treatment will allow a large number of similarly situated agricultural employees to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. Further, the monetary amounts due to many individual class members are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual members of the members of the Proposed Class to seek and obtain relief. Moreover, a class action will serve an important public interest by permitting employees harmed by Defendant's unlawful practices to effectively pursue recovery of the sums owed to them.

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VII.

FIRST CAUSE OF ACTION

FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE

FCRA

[15 U.S.C. § 1681b(b)(2)(A)(I), *ET SEQ.*]

(BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED CLASS

AGAINST ALL DEFENDANTS)

48. Plaintiff, and the other members of the Proposed Class, reallege and incorporate by this reference, as though set forth herein, the prior paragraphs of this complaint.

49. Defendant violated 15 U.S.C. §1681b(b)(2)(A)(i) of the FCRA by including extraneous information in its standard application form permitting it to obtain a consumer report verifying an applicant's background and experience that Defendant required Plaintiff and all other members of the Proposed Class to fill out as a condition of seeking employment with Defendant.

50. The violations of the FCRA were willful. Defendant knew that its standard application form permitting it to obtain a consumer report verifying an applicant's background and experience should not include extraneous information that is prohibited by the FCRA, and acted in deliberate disregard of its obligations and the rights of Plaintiff and all other members of the Proposed Class under 15 U.S.C. § 1681b(b)(2)(A)(i).

51. Plaintiff and all other members of the Proposed Class are entitled to statutory damages of not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

52. Plaintiff and all other members of the Proposed Class are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. §1681n(a)(2).

53. Plaintiff and all other members of the Proposed Class are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C.

§1681n(a)(3).

VIII.

SECOND CAUSE OF ACTION
FOR FAILURE TO OBTAIN PROPER AUTHORIZATION IN VIOLATION
OF THE FCRA
[15 U.S.C. § 1681b(b)(2)(A)(II)]
(BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED CLASS
AGAINST ALL DEFENDANTS)

54. Plaintiff, and the other members of the Proposed Class, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

55. Defendant violated the FCRA by procuring consumer reports relating to Plaintiff and all other members of the Proposed Class without proper authorization. See 15 U.S.C. § 1681b(b)(2)(A)(ii).

56. The violations of the FCRA were willful. Defendant acted in deliberate disregard of its obligations and the rights of Plaintiff and all other members of the Proposed Class under 15 U.S.C. § 1681b(b)(2)(A)(ii).

57. Plaintiff and all other members of the Proposed Class are entitled to statutory damages of not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

58. Plaintiff and all other members of the Proposed Class are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

59. Plaintiff and all other members of the Proposed Class are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the Proposed Class:

- A) That the Court certify the First and Second Causes of Action asserted by the Proposed Class as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- B) A determination and judgment that Defendant willfully violated 15 U.S.C. § 1681(b)(2)(A)(i) and(ii) of the FCRA by improperly including extraneous information in its standard application form permitting it to obtain a consumer report verifying an applicant's background and experience and by obtaining consumer reports on Plaintiff and all other members of the Proposed Class without having proper authorization to do so;
- C) Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages to Plaintiff and all other members of the Proposed Class in an amount equal to \$1,000 for Plaintiff and all other members of the Proposed Class for Defendant's willful violation of the FCRA;
- D) Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages to Plaintiff and all other members of the Proposed Class;
- E) An award for costs of suit and reasonable attorneys' fees pursuant to 15 U.S.C. § 1681n(a)(3); and,
- F) Such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

DATED: April 30, 2018

KINGSLEY & KINGSLEY, APC

By:

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